

BEFORE THE STATE BOARD OF MEDIATION

June 30th, 1969
306 Monroe Building
235 East High Street
Jefferson City, Missouri

In the Matter of: Determining (a) appropriateness of bargaining unit and (b)
majority representation at Training School for Girls at Chillicothe,
Missouri

REPORT AND ORDER

The full membership of the State board of Mediation, consisting of employer members Truman Henry and Clyde Whaley, and employee members Albert Fults and Charles R. Bibbs, and public member and Chairman, Daniel C. Rogers, after NOTICE OF HEARING, convened at the Strand Hotel in Chillicothe, Missouri, at 10:00 A.M., November 18, 1968, and took evidence in the above styled proceeding. Member Clyde Whaley has since deceased.

Consistent with the provisions of Chapter 105 RSMo., the "public body" involved in this administrative proceeding is the "State Board of Training Schools", 418 Dix Road, Jefferson City, Missouri. The "labor organization" is Missouri State Council 72, American Federation of state, County and Municipal Employees, AFL-CIO, Jefferson City, Missouri. The plant or installation, at which the involved employees are located, is the State Training School for Girls at Chillicothe, Missouri.

Mr. Howard L. McFadden, Assistant Attorney General, appeared for the Training School for Girls at Chillicothe (Missouri). He was accompanied by Honorable Wendell Sears, Director, State Board of Training School of Missouri.

Missouri State Council 72, American Federation of State, County and Municipal Employees, AFL-CIO, was not represented by counsel. Mr. Arthur O. Hamm, President, appeared for Missouri State Council 72 in his official capacity, together with other officers and representatives of his union.

Mr. McFadden, following request to make an opening statement, objected to any action by the State Board of Mediation. He gave as grounds therefore that the case before the State Board of Mediation is a "contested case" and that, as provided by Section 105.525,

"The State Board of Mediation shall use the services of the State Hearing Officer in all contested cases."

The objection was overruled by the Chairman, on the ground that a State Hearing Officer has not been identified and that none exists. The Board proceeded alone to adduce evidence by exhibits and testimony to determine (a) appropriateness of bargaining unit and (b) majority representation. A reporter took the evidence for a transcript.

Subsequent to the HEARING at Chillicothe, on November 18, 1968, the parties requested and were granted permission to submit into the record the following stipulation and agreement, to-wit:

December 2, 1968
Jefferson City, Missouri

State Board of Mediation
235 E. High Street
Jefferson City, Missouri 65101

Gentlemen:

The undersigned on behalf of the State Board of Training Schools and the employees at the Training School for Girls at Chillicothe agree with respect to which employees shall constitute an "Appropriate unit" within the meaning of Section 105.500 (1) RSMo. 1967 Supp. as follows:

1. Subject to the provisions of subparagraph No. 2 all employees at the Training School for Girls shall comprise an "appropriate unit" except administrative, supervisory, unclassified, part-time, and seasonal personnel.

The terms administrative and supervisory personnel shall apply only to positions classified by the State Personnel Advisory Board as:

5052 – Girls Training School Superintendent

0502 – Executive II

3011 – Educational Director I

5054 – Juvenile Treatment Coordinator I

5104 – Corrections Casework Supervisor

6133 – Director, Safety, and Fire Prevention

4321 – Graduate Nurse I

Employees classified as 5403 – House Parent III, shall be within the appropriate unit with the exception of one of their number who may be designated by the Board of Training Schools as ex officio superintendent to serve in the absence of the school superintendent (at present Mrs. Margaret Jones).

2. The State Board of Mediation shall determine upon evidence already adduced whether or not the “teachers” at the school fall within the exclusionary provisions of Section 105.510 RSMo. 1967 Supp.

/s/ W. E. Sears
Wendell E. Sears
Director
Board of Training Schools

/s/ Arthur O. Hamm
Arthur O. Hamm
President
Missouri State Council 72

FINDINGS AND CONCLUSIONS

APPROPRIATE BARGAINING UNIT. Section 1 of said stipulation and agreement, aforesaid, defines and delineates an agreed upon “appropriate bargaining unit”. Said Section 1 is, accordingly, hereby approved and adopted by this Board, as resolving and establishing the “appropriate bargaining unit”, amongst employees of the Training School for Girls at Chillicothe (Missouri).

Section 2 of said stipulation and agreement, aforesaid, provides that the State Board of Mediation shall determine upon the evidence already adduced whether or not the “teachers” at the training school shall be include within or excluded from the “appropriate bargaining unit”.

The State Board of Mediation takes administrative notice of an Opinion by the Attorney General of Missouri, dated November 26, 1968, holding that “teachers” of any public body are excepted from the provisions of Chapter 105 RSMo.

Also, in an opinion of the Supreme Court of Missouri, in consolidated cases number 53911 and 53927, involving the City of Cabool, as defendant, in which motion for rehearing was overruled May 14, 1969, the exception of teachers in Section 105.510 RSMo. was approved against an attack that such exception rendered Chapter 105 RSMo. unconstitutional.

In the Cabool case, aforesaid, the Supreme Court of Missouri, said,

“The exclusions of teachers from this act is consistent with provisions applicable only to teachers in other areas, e.g., special pensions rights, Chapter 169, V.A.M.S., and certification procedures, Chapter 168, V.A.M.S. Similar distinctions have been made in other states, Hanslowe, supra, p. 53, and respondents have cited no authority holding exclusion of teachers from a statute dealing with public employment to be unconstitutional classification.”

The State Board of Mediation is convinced that “teachers” at the Training School for Girls at Chillicothe (Missouri), as mentioned in Section 2 of the stipulation and agreement dated December 2, 1968, aforesaid, should not be included in the “appropriate bargaining unit” at the Training School for Girls at Chillicothe (Missouri). IT SO ORDERS,

MAJORITY REPRESENTATION. Missouri State Council 72, aforesaid, has consistently maintained that it is in possession of bona fide membership cards from a vast majority of the employees involved in this proceeding. Its witnesses so testified at the hearing. The claim of “majority representation” by Missouri State Council 72 has never been disputed by officials or representatives of the Training School for Girls at Chillicothe. On the contrary, such “majority representation” was admitted by witnesses of the Training School at the hearing.

Accordingly, the State Board of Mediation finds that there is "majority representation" within the "appropriate bargaining unit", aforesaid, amongst the employees at the Training School for Girls at Chillicothe (Missouri). IT SO ORDERS,

The foregoing REPORT AND ORDER is hereby adopted and certified as the official act of the State Board of Mediation, effective this first day of July, 1969.

Members Fults, Henry
and Bibbs concur.
Member Whaley is deceased.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

by /s/ Daniel C. Rogers
Daniel C. Rogers, Chairman